House REPUBLICAN Conference

Legislative Digest

Week of March 13, 2000 Vol. XXIX, #6, March 10, 2000

J.C. Watts, Jr.
Chairman
4th District, Oklahoma

Monday, March 13

House Meets at 2:00 p.m. for Pro Forma Session

Tuesday, March 14

House Meets at 12:30 for Morning Hour and 2:00 p.m. for Legislative Business
(No Votes Before 6:00 p.m.)

**** Four Suspensions**

Wednesday and Thursday, March 15-16

House Meets at 10:00 a.m. for Legislative Business

Friday, March 17

No Votes Expected

Brian Fortune: *Managing Editor*

Kevin Smith: *Senior Legislative Analyst*

Scott Galupo, Brendan Shields,
Heather Valentine & Michelle Yahng:
Legislative Analysts

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Small Business Investment Corrections Act
H.R. 3845

Committee on Small Business
H.Rept. 106-___
Introduced by Mr. Talent *et al*. on March 8, 2000

Floor Situation:

The House is scheduled to consider H.R. 3845 under suspension of the rules on Tuesday, March 14, 2000. It is debatable for 40 minutes, may not be amended, and requires a two-thirds majority vote for passage.

Summary:

H.R. 3845 makes a number of technical corrections to the 1958 Small Business Investment Act (*P.L. 85-699*) to improve the flexibility of the Small Business Investment Company (SBIC) program and improve small business access to this program.

Specifically, the bill:

* makes minor corrections to regulations to save time and resources for both the Small Business Administration (SBA) and the SBIC. This change will cut down on the substantial time spent in each SBA examination of an SBIC to determine whether or not the SBIC must comply with control regulations;

* removes restrictions on the period of time for investments, allowing SBICs and small businesses to fashion flexible investment agreements to meet the needs of both parties in accordance with the dictates of the commercial marketplace. This change replaces the definition of "long-term" from a minimum of five years to mean any time period not less than one year;

* strikes the one percent interest obligation imposed on SBICs in 1996 to reduce the SBA's appropriated cost of supporting the SBIC program. At least part of the one percent in additional interest is no longer required to keep the subsidy rate at zero in the debenture program. This change permits the SBA to adjust the additional interest and prioritized payment rates annually based on annual subsidy rate calculations;

* strikes three technical provisions in current law that are expected to have no substantive impact on the SBIC program. This change will save time and expense for both the SBA and SBICs by eliminating duplicative filings and inefficient use of SBA resources. Under current law, SBICs may make prioritized payment distributions, profit distributions, and other optional distributions on any date with prior SBA approval. Tax distributions, however, may only be made at the end of calendar year quarters. This forces SBICs to delay otherwise permitted interim distributions until the end of the quarter or divide their distribu-

tions (*i.e.*, tax distributions are made at the end of the quarter while all other distributions are made at any time during the quarter). Postponing distributions to the end of a quarter creates negative cash flow problems for SBICs and splitting them requires two sets of paperwork where one will suffice.

Background:

The U.S. Small Business Administration (SBA), created in 1953 (*P.L. 83-163*), is an independent agency of the federal government established to assist, counsel, and protect the interests of small business concerns. SBA programs provide more than $13 billion in financial assistance annually to over 100,000 small businesses across the United States. These programs remedy shortfalls in access to credit and capital for small businesses. By providing financial assistance in amounts as small as $500 to as much as $1.25 million, the SBA and its private sector partners—bank and non-bank lenders, surety bond insurers, certified development companies, microlenders, and small business investment companies—provide a vital stimulus to the small business sector of the economy. The SBA also provides millions of dollars in disaster assistance to small businesses and homeowners every year.

Small Business Investment Companies

The Small Business Investment Company (SBIC) program is a partnership of public and private funds, in which the SBA supplements the capital of private venture capital investment firms. The additional funds made available through guarantees from the SBA are referred to as "leverage." So long as SBICs operate within the regulations under which they are licensed by the SBA, these investment companies are controlled by their private owners and managers, who make all investment decisions. The entire private capital of an SBIC bears the brunt of any investment risk ahead of the funding guaranteed by the SBA.

Over the past 35 years, SBICs have provided nearly $13 billion to over 100,000 small business, including more than $1 billion in the past year. Through investments in new technologies, the program has fostered scientific discoveries that have led to high-growth businesses. Some SBICs invest in equity or other permanent capital, while others make long term loans, often with some equity rights. These "lender" SBICs provide expansion capital for businesses which can afford to pay interest, but need growth financing in excess of what is available from conventional borrowing.

Costs/Committee Action:

An official CBO cost estimate was unavailable at press time. The Small Business Committee reported the bill by voice vote on March 9, 2000.

Other Information:

"Small Business Administration: Overview and Issues" *CRS Report 96-649*, December 9, 1999.

Christina Carr, 226-2302

Bills Designating Federal Post Offices

H.R. 3699 and H.R. 3701

Committee on Government Reform
No Reports Filed

Floor Situation:

The House is scheduled to consider the following two bills under suspension of the rules on Tuesday, March 14, 2000. Each is debatable for 40 minutes, may not be amended, and requires a two-thirds majority vote for passage.

Summary:

H.R. 3699 designates the post office located at 8409 Lee Highway in Merrifield, Virginia, as the "Joel T. Broyhill Postal Building." Mr. Broyhill served as a United States Representative for the 10th district of Virginia from 1953-1974. He was a member of the House Post Office and Civil Service Committee, the District of Columbia Committee, and the Ways and Means Committee. The former congressman is a decorated veteran who served in WWII and survived a German POW camp. The bill was introduced by Mr. Wolf *et al.* on January 31, 2000.

H.R. 3701 designates the post office located at 3118 Washington Boulevard in Arlington, Virginia, as the "Joseph L. Fisher Post Office." The late Joseph Fisher served from 1975-1981 as the United States Representative for Virginia's 10th district. The former congressman dedicated his life to public service serving in the military, the U.S. Department of State, and the Arlington County Board. He is survived by his wife, seven children, 16 grandchildren, and two great grandsons. The bill was introduced by Mr. Wolf *et al.* on January 31, 2000.

Committee Action:

The Government Reform Committee reported both measures by voice vote on March 9, 2000.

Michelle Yahng, 226-6871

Expressing Support for Humanitarian Assistance to Mozambique

H.Res. 431

Committee on International Relations
No Report Filed
Introduced by Mr. Meeks *et al*. on March 8, 2000

Floor Situation:

The House is scheduled to consider H.Res. 431 under suspension of the rules on Tuesday, March 14, 2000. It is debatable for 40 minutes, may not be amended, and requires a two-thirds majority vote for passage.

Summary:

H.Res. 431 expresses the sense of the House to (1) commend the government of South Africa for its quick response and assistance to the people of Mozambique; (2) commend the government of the United Kingdom for announcing debt cancellation for Mozambique so that precious financial resources may be dedicated to the national relief and recovery effort; (3) commend the Clinton Administration for its growing involvement and leadership in coordinating America's disaster assistance package to Mozambique; (4) urge the U.S. government to take the lead in coordinating international efforts to help Mozambique salvage what remains of this year's food crops and to provide seeds for rural agricultural growers; (5) encourage the international community to continue to provide emergency relief, airlift capacity, and other disaster assistance to Mozambique for the next 90 days; (6) urge the international community to take all necessary steps to locate and demarcate areas that may now harbor semi-buoyant plastic land mines transported to new locations by the flooding in Mozambique; (7) request that the international community develop a coordinated response to the government of Mozambique's request for recovery and reconstruction assistance for buildings and transportation infrastructure; and (8) encourage the international community to assist the nations of southern Africa to increase their capacity to respond to national emergencies and natural disasters.

Background:

Beginning in early February, Mozambique has been experiencing its worst floods on record because of constant heavy rains. As soon as many residents were able to return to their homes, cyclone Gloria caused more floods that drove them away. The government of Mozambique estimates that more than one million people have been left homeless and the death toll is expected to reach into the thousands. Even without additional flooding, disease outbreaks threaten more people than those who perished in the floods. Tens of thousands have contracted malaria from swarms of mosquitoes breeding in the floodwaters.

Many people have been evacuated to makeshift camps, but without food, clean water, and medical supplies, aid workers say the death toll is likely to rise. With acres of crops destroyed, Mozambique President

Joaquim Chissano expects that refugees from the floods will need help for almost a year, and at least $250 million in aid, until they can harvest a new crop.

Many international relief organizations and at least 16 African and Western governments have provided more than $100 million in flood relief since the floodwaters swept across Mozambique over a month ago. Up to 600 Air Force personnel eventually are expected to participate in the rescue efforts, mapping spots where people are at risk and repairing road and rail breaks to speed up aid.

Committee Action:

The International Relations Committee reported the bill by voice vote on March 9, 2000.

Christina Carr, 226-2302

Wendell H. Ford Aviation Investment & Reform Act for the 21st Century (AIR-21) (Conference Report)

H.R. 1000

Committee on Transportation & Infrastructure
H.Rept. 106-513
Submitted by Mr. Shuster on March 8, 2000

Floor Situation:

The House is scheduled to consider the conference report to H.R. 1000 on Wednesday, March 15, 2000. The Rules Committee is scheduled to meet on the bill at 6:30 p.m. on Tuesday, March 14. Additional information on the rule will be provided in a *FloorPrep* prior to floor consideration.

Conference Highlights:

The conference report to H.R. 1000 authorizes approximately $40 billion over three years through FY 2003 for the airport improvement program (AIP), air traffic control facilities and equipment, and Federal Aviation Administration (FAA) operations. Of this amount, $33 billion will be allocated from the aviation trust fund and nearly $7 billion will be "available for appropriation" from the general fund. The measure establishes a series of parliamentary points of order designed to effectively guarantee authorized funding levels for aviation programs. Specifically, any lawmaker may raise a point of order against an appropriations bill if all aviation trust fund money (receipts and interest) is not allocated to fund aviation programs. It also allows any lawmaker to raise a point of order against an appropriations bill that does not fully fund the conference report's AIP and facilities and equipment spending authorizations.

The conference agreement includes no measures to guarantee a funding level for FAA operations, so it must compete with other agencies for its budget operating requirements. However, if the Appropriations Committee fully funds the authorized amounts for FAA operations in the conference report, it will appropriate $33 billion from the trust fund and $7 billion from the general fund for the AIP, facilities and equipment, and FAA operations.

The conference report includes a number of measures to increase airline competition. Specifically, it eliminates slot restrictions at LaGuardia and JFK Airports after January 1, 2007, and at O'Hare Airport after July 1, 2002. In addition, the measure requires the Transportation Department to provide exemptions to any airline flying to O'Hare and the two New York airports if it uses aircraft with 70 seats or less under certain conditions. The conference agreement also requires DOT to grant 12 slot exemptions for flights within the 1,250 perimeter of Reagan National Airport and 12 slot exemptions outside the airport's perimeter.

The conference report authorizes $224 million in FY 2000, $237 million in FY 2001, and $249 million in FY 2002 for civil aviation research, engineering, and development activities at the Federal Aviation Administration (FAA). It also reforms current FAA management practices, establishes a number of whistleblower protections for FAA employees, creates a loan guarantee program to help airlines buy regional jets if they agree to use them to serve small airports, and allows airports to levy a passenger facility charge of up to $4.50 per passenger (up from the current $3) under certain conditions.

Finally, the measure includes a number of environmental initiatives, including increasing funding for noise abatement projects, funding a program to encourage airports to use low-emission vehicles, and establishing procedures to quiet air tours over national parks.

Background:

Last June, the House passed H.R. 1000 by a vote of 316-110 to reauthorize and reform the Federal Aviation Administration (FAA), as well as remove the aviation trust fund from federal budget calculations (*i.e.*, take it "off-budget"). In addition to these and other measures, the bill eliminated slot exemptions (*i.e.*, restrictions on takeoffs and landings) at O'Hare in 2002 and in 2007 at La Guardia and JFK, as well as authorized six additional slot exemptions per day for service to underserved airports and markets at Reagan National.

The Senate passed its own comprehensive FAA reauthorization bill (S. 82; *S.Rept. 106-9*) by voice vote on October 5, 1999. The two chambers have spent the better part of four months in conference attempting to resolve the outstanding differences between the two measures. The main roadblock to an agreement continued to be whether to provide some guarantee for aviation funding. Chairman Shuster proposed a firewall structure (much like the guaranteed funding firewalls established by TEA-21) in lieu of the off-budget proposal contained in the House bill. However, the Senate steadfastly refused these measures. Recently, the two chambers resolved their differences by agreeing on different measures (*i.e.*, points of order) to effectively guarantee funding levels for the airport improvement program and FAA facilities and equipment spending.

Provisions:

— Airport and Airway Improvements —

Airport Improvement Program

The conference report to H.R. 1000 authorizes $40 billion over three years for the Airport Improvement Program (AIP), FAA facilities and equipment, and FAA operations. Specifically, the measure authorizes the following funding levels for the AIP over the next four years: (1) $2.5 billion for FY 2000 (because the Appropriations Committee has already appropriated funding for FY 2000, this funding level is essentially irrelevant); (2) $3.2 billion for FY 2001; (3) $3.3 billion for FY 2002; and (4) $3.4 billion for FY 2003.

For the FAA's facilities & equipment (F&E) program, the measure authorizes (1) $2.7 billion for FY 2000; (2) $2.7 billion for FY 2001; (3) $2.9 billion for FY 2002; and (4) $3 billion for FY 2003.

For FAA operations, the conference agreement authorizes (1) $6.6 billion for FY 2001; (2) $6.9 billion for FY 2002; and (3) $7.4 billion for FY 2003. The bill also includes specific authorizations for universal access security systems at airports, wildlife hazard mitigation measures, Alaska's National Airspace Interfacility Communications System, airport runway safety measures, helicopter infrastructure projects to accommodate EMS flights to hospitals, air cargo security enhancements, an Office of Airline Information, and the development of air traffic control infrastructure for the new tilt-rotor aircraft.

Airport Improvement Program (AIP) Grants. The conference report makes a number of changes to the AIP distribution formula. Specifically, the measure (1) increases the minimum entitlement at primary airports (those with more than 10,000 passengers in a year) and raises the entitlement cap to $26 million; (2) increases the state entitlement for general aviation airports from 18.5 to 20 percent when the funds available from the AIP is at least $3.2 billion; (3) permits money received by Alaska, Hawaii, or Puerto Rico under the state entitlement to be used for any public airport in those states; (4) permits state entitlement money to be used for system planning; (5) increases the noise set-aside from 31 percent of the discretionary fund to 34 percent; (6) increases the entitlement for cargo airports from 2.5 percent to three percent of total AIP funds; (7) allows state highway funding to be used for runway, taxiway, and apron pavement at general aviation airports serving aircraft that weigh less than 60,000 pounds and with runways that are 5,000 feet or less; and (8) makes pavement maintenance at general aviation and small commercial service airports eligible for AIP grants.

The conference agreement also requires DOT to establish a new apportionment category for general aviation metropolitan access and reliever airports. The measure sets aside one percent of the discretionary fund for reliever airports if AIP funds amount to at least $3.2 billion each year. Finally, it authorizes AIP grants to 10 airports to fund the added cost of purchasing low-emission vehicles as well as the facilities and equipment for using those vehicles (these grants are limited to $2 million per airport and the federal share of the grant must be 50 percent).

Grants from the Small Airport Fund. The conference report to H.R. 1000 sets aside $15 million or 20 percent—whichever is less—of the amounts in the Small Airport Fund dedicated to non-hub airports for projects to help these airports comply with airport certification standards. This set-aside will begin in the first fiscal year after these new rules take effect and will last five years or until the FAA determines that all small airports meet the new standards. In addition, when awarding grants from the small airport fund, the FAA must give priority to projects that support operations by jet aircraft as long as the local share will cover at least 40 percent of the cost. Finally, the measure permits 20 AIP grants using innovative financing techniques, which may include (1) payment of interest; (2) commercial bond insurance and other credit enhancements associated with airport bonds; (3) paying a higher local share of the grant; and (4) debt repayment (incurred before enactment) on a terminal development project.

Miscellaneous AIP Provisions. The conference agreement includes a number of provisions relating to the airport improvement program. Specifically, the measure:

* makes certain equipment and work eligible for AIP funding, including runway construction, universal access systems, emergency call boxes, windshear detection equipment, closed circuit weather surveillance equipment, runway incursion prevention devices, and enhanced vision technologies (these items must be certified or approved by the FAA);

* requires medium and large hub airports that are dominated by one or two airlines to file competition plans in order to receive an AIP grant or obtain PFC approval after October 1, 2000, and establishes penalties for non-compliance;

* permits grants under the state block grant program to include a federal share of less than the usual 90 percent (*i.e.*, requiring a local share that is more than the usual 10 percent);

* makes it easier for small hub and non-hub airports to receive a letter of intent (LOI) by limiting to the larger airports the criteria that the project must enhance system-wide capacity significantly; and

* stipulates that if the Transportation Secretary finds that an AIP entitlement grant will not be used, that money may be used for another airport grant during that fiscal year.

Passenger Facility Charges (PFCs)

The measure authorizes the FAA to permit an airport to levy a PFC of up to $4.50 (up from the current $3) if the FAA finds that (1) the project will improve safety or security, increase competition among airlines, reduce current or anticipated congestion, or reduce the impact of aviation noise; and (2) the project cannot reasonably be expected to be paid for from the higher AIP authorization levels. In addition, the FAA may prohibit an airport from charging the higher PFC to pay for terminal construction or for a highway or transit project if the airport has not adequately financed certain airport facilities such as runways, taxiways, aprons, and aircraft gates. The bill requires a medium or large hub airport that charges a PFC of more than $3 to forego 75 percent of its passenger entitlement money (up from the current 50 percent). The money foregone is deposited into the small airport fund. Finally, the measure allows airports to request that PFCs be waived under certain circumstances.

PFC money is used to finance eligible airport-related projects and—unlike AIP funds—may include making payments for debt service or indebtedness incurred to carry out projects. In addition to the current law $3 cap on each airport's PFC, there is also a $12 limit on the total PFCs that a passenger may be charged per round-trip. No airport may charge a PFC without FAA approval. Although the FAA oversees the PFC program, the agency does not impose the fee (*i.e.*, it is a state, local, or port authority fee, not a federally-imposed tax). PFCs are collected by the airlines and paid directly to the airport without going through the U.S. Treasury. As of early 1999, more than 300 commercial service airports had PFC approval.

Airport Security Program

The conference agreement to H.R. 1000 authorizes $5 million annually for the Airport Security Program and permits the FAA to carry out at least one program to test and evaluate innovative airport security systems and related technology. The bill makes clear that this grant does not require a local share.

Contract Tower Program

The conference report authorizes $6 million annually for the contract tower program and directs the DOT to extend the current contract tower program to air traffic control (ATC) towers that do not now qualify for the program. In addition, the measure requires the airport or state or local government to share in the costs of operating the tower to the extent that the costs of that operation exceed the benefits. Since 1982, the FAA has provided ATC services at many low activity, Level I visual flight rule (VFR) airports by contracting with ATC companies in the private sector, thus providing significant cost savings and enhancing aviation safety. Finally, it authorizes grants of up to $1.1 million each to two airports for tower construction (the federal share of which must be limited to 75 percent of the cost).

Designating Military Airports

The conference agreement increases the number of airports in the Military Airport Program (MAP) from 12 to 15 and requires that at least one of them be a general aviation airport. In addition, the measure (1) increases the limit on the amount that may be spent on terminal buildings at current and former military airports from $5 million to $7 million; and (2) increases the limit on the amount that may be spent on parking lots, fuel farms, utilities, and hangars from $4 million to $7 million and adds air cargo terminals to the list of items eligible for funding.

— *Airline Service Improvements* —

Access to High Density Airports

At almost all airports in the United States, there is no limit on the number of flights an airline may offer. However, there are four urban airports (O'Hare in Chicago, LaGuardia and JFK in New York, and Reagan National near Washington, D.C.) where flights are limited by the High Density Rule, which requires an aircraft to have a slot in order to take-off or land. Although airline deregulation increased demand for access to these airports, many carriers have been unable to establish new service because of the lack of slot availability. As such, the conference agreement includes a number of measures designed to enhance airline competition.

LaGuardia and JFK Airports. The conference report eliminates slot restrictions at LaGuardia and JFK Airports after January 1, 2007. In the interim, DOT must provide exemptions to any airline flying to the two New York airports if it uses aircraft with 70 seats or less and (1) provides service to a small hub or non-hub that it did not previously serve; (2) provides additional flights to a small hub or non-hub that it currently serves; or (3) provides service with a regional jet to a small hub or non-hub as a replacement for a prop plane. DOT must grant exemptions to new entrant and limited incumbents for service to New York; however, exemptions are available only for airline operations with Stage 3 aircraft.

Chicago O'Hare. The conference agreement eliminates slot restrictions at O'Hare Airport after July 1, 2002. In the interim, DOT must provide exemptions to any airline flying to O'Hare if it uses aircraft with 70 seats or less under similar conditions outlined above. In addition, beginning on July 1, 2001, slot restrictions will apply only between 2:45 p.m. and 8:14 p.m. The measure requires DOT to grant 30 slot exemptions to new entrants and limited incumbents for service to O'Hare within 45 days of their request (again, only to those operations with Stage 3 aircraft).

The conference report eliminates slots restrictions for international service at O'Hare. However, the Transportation Secretary may limit access in those cases where the country involved does not provide similar open access for U.S. airlines. The measure prohibits DOT from withdrawing slots from U.S. airlines in order to give them to foreign airlines (any slot previously withdrawn from U.S. airlines and given to a foreign airline must be returned to the U.S. airline). Finally, U.S. airlines that hold slots to provide international service may convert them for domestic use.

Reagan National. The conference agreement requires DOT to grant 12 slot exemptions for flights within the perimeter (*i.e.*, the 1,250-mile perimeter of the airport), and 12 slot exemptions outside the airport's perimeter (these slots may be allocated to more than one airline). These exemptions must be for flights between 7:00 a.m. and 10:00 p.m. and may not allow more than two additional flights per hour. Of the flights within the perimeter, four must be to small hubs or non-hubs and eight must be to medium, small, or non-hub airports.

Funding for Underserved Airports

The conference agreement requires DOT to establish a pilot program to help improve air service to underserved airports. It prescribes the criteria and requirements that communities must meet to participate in the program. For example, in order to participate, a community must be a non-hub or small hub with insufficient air service or unreasonably high airfares. No more than four communities in any one state may participate and the total number is limited to 40 overall.

Regional Air Service Incentive Program

The conference report establishes an incentive program designed to improve jet service to underserved markets by assisting commuter airlines purchase regional jets. The measure authorizes the DOT—subject to appropriations—to offer secured loans, loan guarantees, and lines of credit for aircraft purchases available to commuter airlines and new airlines. It prescribes the conditions and limitations on how funds may be used. The purpose of this provision is not to help airlines or regional jet aircraft manufacturers, but to use market mechanisms to encourage airlines to use more of these jets in underserved markets. Therefore, the measure conditions the grant of these credit instruments on a commitment to provide air service to an underserved market.

Airline Customer Service

The conference report requires airlines to submit customer service plans to the Transportation Department. The DOT Inspector General must monitor the implementation of each plan, and submit a status report to Congress on June 15, 2000, and a final report on December 31, 2000. The final report must also include a comparison of each airline's customer service (for those that submitted plans to DOT with those that did not). DOT must initiate a rulemaking within 30 days of enactment to increase the domestic baggage liability limit. The measure increases the penalties for violating aviation consumer laws and regulations from $1,100 to $2,500 per violation. The conference report also includes prohibiting discrimination against the handicapped as one of the responsibilities of the DOT consumer office. Finally, the conference report authorizes $2.3 million in FY 2000, $2.4 million in FY 2001, $2.5 million in FY 2002, and $2.7 million in FY 2003 to enforce airline consumer protections.

Other Provisions

The conference agreement also (1) requires the DOT to modify Airline Service Quality Performance Reports to disclose more accurately the reasons for air travel delays and cancellations; and (2) establishes a commission to study the financial condition of travel agents (especially small travel agents) and the effects this is having on consumers.

— FAA Management Reform —

The conference agreement contains a number of reforms designed to improve the performance of the Federal Aviation Administration (FAA). Under existing law, the president—with the advice and consent of the Senate—appoints the Federal Aviation Management Advisory Council. The conference report retains this procedure for the initial appointments to the council. However, it authorizes the Transportation Secretary to make all subsequent appointments. Currently, more than two years after its creation, the president has not appointed any members of this council. The Transportation Committee believes that shifting the responsibility for appointments down to the secretarial level will help speed up the process. The council will be comprised of 10 aviation industry representatives and one union leader initially appointed by the president (for three-year terms) and five individuals appointed by the Transportation Secretary to represent the public (for five-year terms).

The council must establish an Air Traffic Services Subcommittee to oversee the air traffic control system. The measure outlines the panel's duties, responsibilities, and requirements. In addition, the FAA administrator must appoint (for five years) a Chief Operating Officer (COO) to manage the day-to-day operations of the air traffic control system (with the approval of the subcommittee). The COO will report to the FAA administrator and may receive the same salary as the administrator plus a possible 30 percent performance bonus.

The conference report also authorizes a joint FAA-industry pilot program (up to 10 projects) to encourage non-federal investment in air traffic control (ATC) modernization programs. The bill limits FAA participation to no more than one-third of project costs and no more than $15 million per project. In addition, the measure requires DOT to study federal environmental review requirements related to aviation project planning and approval and determine steps to streamline the environmental review process for such projects. The study must be submitted to Congress within one year of enactment.

The Transportation Committee is concerned about delays in promulgating rules that are caused by lengthy and, in many cases, unnecessary secretarial review. Accordingly, the measure raises from $100 million to $250 million the threshold that triggers secretarial review of an FAA regulation and limits the type of regulations that will be considered significant enough to justify secretarial review. Finally, it (1) requires the DOT Inspector General to undertake an analysis of the cost accounting system that FAA is developing to ensure that it is appropriate, reasonable, and understandable; and (2) requires the FAA to report on plans to modernize the oceanic air traffic control system.

— Aviation Funding Guarantees —

The conference report does not include provisions in the House-passed bill to remove the aviation trust fund from federal budget calculations (*i.e.*, take it "off budget"). Instead, the measure establishes a series of parliamentary points of order designed to effectively guarantee funding levels for aviation spending authorizations. Specifically, it allows any lawmaker to raise a point of order against an appropriations bill if all aviation trust fund money is not allocated to aviation programs. It also allows any lawmaker to raise a point of order against an appropriations bill that does not fully fund the conference report's AIP and facilities and equipment spending authorizations. The bill includes no measures to guarantee a funding level for FAA operations, so it must compete with other agencies for its budget operating requirements. However, if the Appropriations Committee fully funds the authorized amounts for FAA operations in the conference report, it will appropriate $33 billion from the trust fund and $7 billion from the general fund for the AIP, facilities and equipment, and FAA operations.

— *FAA Research, Engineering, and Development* —

The conference report authorizes $224 million in FY 2000, $237 million in FY 2001, and $249 million in FY 2002 for civil aviation research, engineering, and development activities at the Federal Aviation Administration (FAA). The House passed similar legislation (H.R. 1551; *H.Rept. 106-223*) by voice vote on September 15, 1999.

— *Family Assistance* —

In 1996, after the ValuJet and TWA crashes, Congress enacted legislation (*P.L. 104-264*) to require the National Transportation Safety Board (NTSB) and individual airlines to address the needs of families of passengers involved in aircraft accidents in which there is a major loss of life. In addition, the law created a task force to address these issues. On October 29, 1997, the task force issued its report. While many of its recommendations do not require legislative action, the measure does address certain issues that have arisen as a result of experience under this new law. These changes are outlined below.

Responsibilities of National Transportation Safety Board

The conference report to H.R. 1000 makes several changes to the current moratorium on lawyer solicitation of families following an accident. Specifically, it (1) applies the moratorium to accidents involving foreign airlines that occur in this country; (2) applies the moratorium to associates, agents, employees, or other representatives of the attorney; and (3) increases the moratorium period from 30 to 45 days. In addition, the measure allows Red Cross counselors and mental health workers to offer their services at a crash scene for 30 days even if they are not licensed in that state. The NTSB's family liaison may extend this period for another 30 days if needed and if the local authorities are notified. Finally, it extends family assistance services to employees of foreign airlines and to other people aboard the flight even if they did not pay for the seat or hold a flight reservation.

Air Carrier Plans

The conference report mandates several changes to the airlines' disaster assistance plans. These changes include (1) requiring airlines—upon request—to inform a family as to whether a family member had a reservation on the flight; and (2) requiring airlines to provide adequate training to employees to meet the needs of families. Airlines must update their disaster assistance plans within 180 days of enactment. It also requires airlines to consult with the NTSB and the State Department when they help families in the U.S. affected by a crash outside the country. The measure limits the liability of an airline that informs a family as to whether the family member had a reservation on the flight. The bill includes similar provisions for foreign airlines.

Death on the High Seas Act

The conference agreement clarifies that the 1920 Death on the High Seas Act (DOHSA) does not apply to aviation accidents within 12 miles of U.S. shore. In doing so, the measure is intended to guarantee equal legal standing to families of the victims of an airline accident regardless of where the accident occurs. A recent Supreme Court decision held that the DOHSA applies to accidents where a plane crashes into the ocean more than three miles from land. The law limits the damages a family can receive to economic damages, such as the loss of wages. In the case of the death of a child, the family is entitled to almost nothing in monetary compensation for their loss. However, if a plane crashes on land, the law permits the award of monetary damages. For those airline accidents that occur more than 12 miles from land, DOSHA will continue to apply; however, the measure allows families to recover non-monetary damages for wrongful death (*i.e.*, loss of care, comfort, and companionship). As under current law, no punitive damages are allowed.

— *Safety* —

The conference report to H.R. 1000 addresses a number of FAA safety issues. Specifically, it requires large cargo aircraft to be equipped with collision avoidance systems that are as good as the Traffic Alert and Collision Avoidance System (TCAS) II by December 31, 2002. The FAA may extend the deadline by two years if doing so promotes safety. In addition, the bill (1) makes a number of FAA-requested changes to the Pilot Records Improvement Act; (2) requires the FAA to issue proposed small airport certification standards within 60 days of enactment; (3) requires the FAA to issue a rule to protect airlines and their employees from civil enforcement actions under the Flight Operations Quality Assurance (FOQA) program; (4) requires the FAA to issue a rule to require that all life-limited parts be permanently labeled when they are removed from an aircraft if they are about to exceed their specified useful life; (5) authorizes the FAA to impose a fine of up to $25,000 on passengers that interfere with a flight crew or endanger the safety of the aircraft; (6) establishes employment restrictions and criminal penalties for individuals who traffic bogus airline parts; and (7) requires the installation of emergency locator transmitters on small turbojet aircraft with certain exemptions.

— *Whistleblower Protections* —

The conference agreement establishes a number of whistleblower protections for FAA employees. Specifically, it prohibits an airline or contractor of an airline from firing—or taking other adverse action against—an employee who (1) provides information to the federal government relating to air safety; (2) testifies at a proceeding relating to airline safety; or (3) assists or participates in such a proceeding. Whistleblowers may file a complaint with the Labor Secretary within 180 days of a violation. The Labor Department must notify the airline and the FAA of the complaint and—after giving the airline an opportunity to respond—investigate its merit within 60 days of receiving a complaint. The measure establishes a $1,000 penalty for an employee who files a frivolous complaint as well as civil penalties for those who take action against an FAA employee.

— *National Parks Air Tour Management* —

The conference report to H.R. 1000 establishes a process for the Federal Aviation Administration (FAA) and the National Park Service (NPS) to coordinate the development and implementation of regulations governing aircraft overflights affecting national parks. Specifically, the measure requires that commercial air tour operators conduct their operations over a national park or tribal lands within or adjacent to a national park, according to an approved air tour management plan (ATMP). Before commencing air tour operations, an operator must apply to the FAA for authority to conduct operations over the park. The FAA will prescribe operating conditions and limitations for each commercial air tour operator—and in cooperation with the National Park Service (NPS) Director—develop an ATMP. Air tours may be conducted at a park without an ATMP if the operator secures a letter of agreement from the FAA and the park involved and the total number of flights is limited to five flights in any 30-day period.

The objective of the ATMP is to develop acceptable and effective measures to mitigate the adverse impacts, if any, of commercial air tours upon the natural and cultural resources and visitor experiences at national parks and tribal lands within or adjacent to national parks. The conference agreement requires the FAA to grant interim operating authority to an existing air tour operator who applies for operating authority. This allows the operator to fly its existing air tour routes over the park while an ATMP is being developed. The measure does not apply to Grand Canyon National Park or any national park or land in Alaska, as a separate statute already addresses these areas (*P.L. 100-91*).

— *Miscellaneous Provisions* —

The conference agreement to H.R. 1000 makes a number of changes to current law governing the FAA. Specifically, the measure:

* reauthorizes the war risk insurance program through December 31, 2003. The House passed similar legislation in 1999 (H.R. 98; *H.Rept. 106-2*) by voice vote;

* requires the FAA to continue to work to develop a new "Stage 4" standard for quieter aircraft. Beginning July 1, 2000, the FAA must submit annual reports to Congress on these developments;

* transfers responsibilities and offices for aeronautical charting to the FAA from the Commerce Department;

* requires airlines to provide monthly reports to DOT describing any air travel incidents involving animals, directs DOT to work with airlines to improve employee training regarding animal transportation, and requires airlines to provide information to animal owners about pet air travel conditions;

* allows the FAA, in cases where the property is leased for free or nominal rent (*i.e.*, significantly below fair market value), to make improvements to that property even if the cost of the improvements are more than the cost of the lease;

* authorizes the FAA to establish a pilot program to test long-term contracts for leasing aviation equipment and facilities;

* directs the DOT to work with international organizations to improve access for handicapped passengers;

* prohibits discrimination in air travel on the basis of race, color, religion, national origin, sex, or disability;

* provides the legislative authority for implementing a certain provision of the Chicago Convention. This will allow the FAA—through bilateral agreements—to relinquish responsibility for U.S.-registered aircraft for which safety oversight responsibility is transferred abroad and accept responsibility for the foreign-registered aircraft whose oversight is transferred to the U.S.;

* allows pilots, mechanics, carriers, and other FAA certificate holders to appeal a FAA action that revokes their certificate immediately. Under the measure, if FAA revokes a certificate on an emergency basis, the revocation will be effective immediately. However, the individual may appeal the emergency nature of the revocation (the request must occur within 48 hours)—as well as the merits of the revocation—to the NTSB;

* codifies a provision from the FY 1997 Transportation Appropriations Act (*P.L. 104-208*) that allows the FAA to establish a consortia of government and aviation industry representatives at individual airports to provide advice on aviation security and safety;

* requires the FAA to establish a foreign repair station advisory panel;

* gives foreign airlines the same right to seek waivers from the Stage 3 compliance schedule as U.S. airlines;

* requires DOT to release airman records within 120 days of enactment (though each airman will have the opportunity to withhold their information);

* authorizes $2 million to help DOT eliminate the backlog of pending equal employment opportunity complaints; and

* requires the DOT to conduct a number of studies and report to Congress on these issues.

Legislative Action:

The House passed H.R. 1000 (*H.Rept. 106-167, Pts. I & II*) by a vote of 316-110 on June 15, 1999. The Senate passed its version (S. 82; *S.Rept. 106-9*) by voice vote on October 5, 1999. The Senate passed the conference report on March 8 by a vote of 82-17.

Other Information:

For information on H.R. 1000 as it was debated in the House, see *Legislative Digest*, Vol. XXVIII, #17, June 11, 1999.

Kevin Smith, 226-7862

Small Business Reauthorization Act

H.R. 3843

Committee on Small Business
H.Rept. 106-___
Introduced by Mr. Talent *et al.* on March 8, 2000

Floor Situation:

The House is scheduled to consider H.R. 3843 on Wednesday, March 15, 2000. The Rules Committee is scheduled to meet on the bill at 6:30 p.m. on Tuesday, March 14. Additional information on the rule and potential amendments will be provided in a *FloorPrep* prior to floor consideration.

Highlights:

H.R. 3843 reauthorizes the Small Business Administration (SBA) and the programs of the Small Business Act (*P.L. 83-163*) and the Small Business Investment Act (*P.L. 85-699*) through FY 2003. The bill reauthorizes, modifies, and strengthens the SBA's financial programs, including the general business loan guarantee program, the Certified Development Company program, the Microloan program, and the Small Business Investment Company program. Finally, it reauthorizes the technical assistance and procurement programs of the SBA, including the Women's Business Center program and the Small Business Development Center program.

Background:

The U.S. Small Business Administration (SBA), created in 1953, is an independent agency of the federal government established to assist, counsel, and protect the interests of small businesses. SBA programs provide over $13 billion in financial assistance annually to over 100,000 small businesses across the U.S. These programs remedy shortfalls in access to credit and capital for small businesses. By providing financial assistance in amounts as small as $500 to as much as $1.25 million, the SBA and its private sector partners—bank and non-bank lenders, surety bond insurers, certified development companies, microlenders, and small business investment companies—provide a vital stimulus to the small business sector of the economy. The SBA also provides millions of dollars in disaster assistance to small businesses and homeowners every year.

Provisions:

— Reauthorization Levels —

General Business—7(a) Loans

H.R. 3843 sets new authorization levels for the 7(a) loan program at $14.5 billion for FY 2001, $15 billion for FY 2002, and $16 billion for FY 2003.

While the SBA administers numerous programs that provide financial and technical assistance to small firms, its 7(a) General Business Loan Guaranty Program is the agency's largest and most important in terms of the number of loans provided and the program level supported. It provides loan guarantees to eligible small businesses that have been unsuccessful in obtaining private financing on reasonable terms. Under the program, the SBA provides loan guarantees ranging from 75 percent to 80 percent of loans made by private lenders, with the average guaranty being approximately 76 percent. Nearly 7,000 banks and non-bank lenders are now approved to participate in the program. At present, SBA-guaranteed loans are generally limited to amounts of $750,000 or less. The proceeds from an SBA loan may be used for virtually any business purpose.

Certified Development Company Program

H.R. 3843 reauthorizes the certified development company (CDC) program through FY 2003 and sets new authorization levels at $4 billion for FY 2001, $4.5 billion for FY 2002, and $5 billion for FY 2003. The CDC program provides permanent, fixed-rate financing for businesses that need to acquire industrial or commercial buildings or heavy equipment and machinery. The program is delivered by local CDC companies working with private lenders and the SBA. The CDC agrees to provide financing to a small business borrower as part of a larger financing package.

Small Business Investment Company Program

This measure reauthorizes and modifies the Small Business Investment Company (SBIC) Program, and sets new authorization levels for both debentures and securities. For debentures, the bill authorizes $1.5 billion for FY 2001, $2.5 billion for FY 2002, and $3 billion for FY 2003. For securities, it authorizes $2.5 billion for FY 2001, $3.5 billion for FY 2002, and $4 billion for FY 2003.

The SBIC program is a partnership of public and private funds, in which the SBA supplements the capital of private venture capital investment firms. The additional funding made available through SBA guarantees is referred to as "leverage."

Microloan Program

H.R. 3843 reauthorizes the Microloan Program for FY 2001-2003. Specifically, it authorizes $60 million for direct loans in FY 2001, $80 million in FY 2002, and $100 million in FY 2003. The measure also authorizes $50 million for technical assistance loans in FY 2001, $70 million in FY 2002, and $90 million in FY 2003. The Microloan program is targeted to very small (under $25,000) "start up" loans for cottage industries in economically distressed rural and urban areas. Microloans are made through local intermediaries—development organizations that also provide "hands on" technical assistance.

— Miscellaneous Provisions —

The bill also authorizes:

* $125 million in FY 2001-2003 for Small Business Development Center (SBDC) programs that provide management assistance and counseling to small businesses. They are predominantly operated through state universities and are funded through a federal/state matching grant;

* $5 million in FY 2001-2003 for the Drug-Free Workplace Program;

* $10 million in FY 2001-2003 for the HUBZone program that helps small businesses located in low-income areas employ low-income individuals;

* $1 million in FY 2001-2003 for the Women's Business Enterprise Development Programs, which provide special assistance to women entrepreneurs and are funded through a matching grant formula;

* $5 million in FY 2001, $6 million in FY 2002, and $7 million in FY 2003 for the Service Corps of Retired Executives (SCORE), which provides volunteer management assistance and advice on-site to small businesses from retired entrepreneurs and executives; and

* extends the Very Small Business Concerns and the Socially and Economically Disadvantaged Business programs.

Costs/Committee Action:

An official CBO cost estimate was unavailable at press time.

The Small Business Committee reported the bill by voice vote on March 9, 2000. .

Brendan Shields, 226-0378

Private Property Rights Implementation Act

H.R. 2372

Committee on the Judiciary
H.Rept. 106-___
Introduced by Mr. Canady *et al.* on June 29, 1999

Floor Situation:

The House is scheduled to consider H.R. 2372 on Thursday, March 16, 2000. The Rules Committee has not yet scheduled a time to meet on the bill. Additional information on the rule and potential amendments will be provided in a *FloorPrep* prior to floor consideration.

Summary:

H.R. 2372 clarifies current case law regarding the constitutional taking of private property by a federal or local government entity. The intent of the measure is to make it easier for property owners who believe their Fifth Amendment rights have been violated to have their case heard in a federal court. Specifically, the bill addresses two primary elements involved in a "takings" claim: "abstention" and "ripeness." The bill states that federal courts may not abstain from considering takings cases that involve solely federal claims (that is, claims without reference to state law). In instances where a state law is in question, the federal court may suspend its final ruling on whether a property was justly taken until a state-level appellate court resolves the issue.

The bill also addresses the "ripeness" of property takings claims. Under current case law, when a property owner challenges the taking of his property in federal court, the plaintiff must show that (1) a federal or local agency issued a "final decision" regarding how the property may be used, and (2) he exhausted all possible state-provided remedies for "just compensation." Once these points are proven, the case is considered ready, or "ripe," for consideration in a federal court.

H.R. 2372 clarifies the time when ripeness is reached based on when the agency involved in the property dispute has issued its "final decision" to include the following:

* **Filing and Denial of Applications.** Landowners must file an application to develop their property, such as building an office tower, prior to breaking ground. If the application is denied with a written explanation describing how the application could be changed and subsequently approved, the property owner must reapply, taking into consideration the recommendations.

* **Filing a Waiver Request or an Appeal to the Denied Application.** If the initial application is denied, the landowner must then file an appeal of the application denial to the relevant agency, and also apply for a waiver from the restrictions that the agency imposes on the use of the land. For example, if the office building proposal is rejected because of a building height restriction, the owner may request a waiver of that restriction for his project or appeal the application denial.

* **Seeking a Remedy Through a Locally-Elected Body.** If states allow a locally-elected body to review land use denials, the owner must file for an appeal of his land use denial with this entity. If the right to an appeal is denied, the government is considered to have issued its "final decision," allowing the owner to proceed to federal court to resolve the dispute.

Finally, H.R. 2372 allows landowners to proceed directly to federal court if they prove that all local procedures would be "futile."

Proponents argue that the measure protects private property owners from excessive regulation that devalues their property. Such protection is in keeping with the principle of federalism: it is proper for federal courts to preserve a fundamental, constitutionally-guaranteed right—the right to just compensation for the taking of private property. And by streamlining the procedures for resolving takings claims, both individuals and local governments will spend less money on litigation. Finally, supporters assert that the bill levels the playing field for small and middle class property owners, who can ill afford the costs of the labyrinthine legal procedures currently in place.

Opponents counter that the bill unconstitutionally forces premature federal involvement in local land use disputes. Thus, big developers will be able to intimidate localities that can't afford to litigate in the federal forum, which will undermine the ability of local officials to protect public health and safety and the environment. Opponents also charge that the bill is unnecessary: there is no reliable evidence to suggest that takings cases are hanging fire in state courts. Finally, the measure's procedural changes will increase the federal judicial workload, which, because of the high number of vacancies and federalization of other areas of law, is already too cumbersome.

Background:

Federal and local government agencies have the power to claim privately-owned property—real estate, in most cases—under the U.S. Constitution. The Fifth Amendment allows private property to be acquired for public use; in turn, the government must provide "just compensation" to the owner for the "taking." Generally speaking, state and local agencies govern local land-use planning.

When a dispute occurs over how much the property owner was compensated, he may only take legal action against the federal or local government; state governments may not be directly sued. Prior to court action, landowners may appeal a decision to take their property according to procedures outlined by states, but must rely on the outcome of all state-level remedies available to them before turning to a federal court for help. As a result, the federal government is usually loath to intercede in a state-level concern, which is why many federal courts historically abstain altogether from hearing takings cases. Since this process is often complicated, costly, and confusing to individual landowners, many become discouraged in pursuing a final resolution to their dispute.

Moreover, as courts interpret the ripeness doctrine, many cases get held up because state or local authorities do not hand down their final decisions in a timely fashion that will allow owners to proceed with a federal-level appeal. When an individual first buys a piece of property, he must apply to a certain local agency stating how he intends to use the land. The application must be reviewed and approved before the property may be developed; however, such agencies often take several months or years to make a final determination (or even purposely delay issuing a final decision), resulting in the landowner waiting in a regulatory limbo and being barred from approaching a federal court to ultimately resolve the matter.

A survey of federal takings cases reveals that 83 percent of the claims initially raised in U.S. district courts never received a hearing "on the merits" (that is, the case was not considered "ripe"), and of those property owners who could afford to appeal their cases, more than 64 percent still failed to have their appeals heard. The same survey notes that of the small portion of appellate cases where takings claims were found procedurally "ripe" and the merits reached, it took property owners an average of nearly 10 years for the appellate court to reach its determination.

Costs/Committee Action:

A CBO cost estimate was unavailable at press time.

The Judiciary Committee reported the bill by a vote of 14-7 on March 9, 2000.

Scott Galupo, 226-2305